

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

LeRoy Koppendraye
Marshall Johnson
Thomas Pugh
Phyllis A. Reha

Chair
Commissioner
Commissioner
Commissioner

In the Matter of the Application of Northern
States Power Company d/b/a Xcel Energy for
Authority to Increase Rates for Electric Service
in Minnesota

ISSUE DATE: May 22, 2007

DOCKET NO. E-002/GR-05-1428

ORDER GRANTING CLAIM FOR
INTERVENOR COMPENSATION

PROCEDURAL HISTORY

On September 1, 2006, the Commission issued its Findings of Fact, Conclusions of Law and Order in the Xcel electric general rate case.

On November 2, 2006, the Commission declined to reconsider any decisions in the Order.

On December 7, 2006, Myer Shark filed a request for a preliminary determination on intervenor compensation in this matter. Mr. Shark also requested a waiver of the time for filing under Minn. Rules 7831.0300, subp. 1.

On January 22, 2007, the Commission issued its Order Granting Variance and Making Preliminary Determination of Eligibility for Intervenor Compensation. In that Order, the Commission found that Mr. Shark had satisfied the requirements under Minn. Rules, Part 7831.0500 for a preliminary determination of eligibility.

In the January 22, 2007 Order, the Commission declined to make a preliminary determination on any of the discretionary factors listed under Minn. Rules, Part 7831.0500. subp. 2.¹

On February 20, 2007, Mr. Shark filed a claim for intervenor compensation with the Commission.

On March 7 and 14, 2007, Mr. Shark filed additional information to supplement his claim in response to Commission information requests pursuant to Minn. Rules 7831.0700 and 7831.0800.

¹ Among these factors are material assistance to Commission deliberations, the potential for common representation with other intervenors and unrealistic expectations for compensation.

On March 22, 2007, Xcel filed a response to Mr. Shark's claim for intervenor compensation.

On April 4, 2007, Mr. Shark filed a reply to Xcel.

On April 18, 2007, the Commission sought additional information regarding Mr. Shark's claim.

On April 25, 2007, Mr. Shark responded to the request for information.

On May 9, 2007, Mr. Shark filed further responses in connection with his claim.

On May 10, 2007, the Commission met to consider the matter.

FINDINGS AND CONCLUSIONS

I. The Governing Rules

A. Minn. Rules, Part 7831.0500, subp. 3. Effect of Preliminary Determination on Eligibility

The Commission's preliminary determination on eligibility does not guarantee either a grant or a denial of a compensation award. Minn. Rule, Part 7831.0500, subp. 3. The preliminary determination does, however, establish a presumption either for or against an eventual award. If the preliminary determination is for a grant of intervenor costs, the Commission must overcome a presumption of eligibility if it wishes to deny the final claim. If the preliminary determination is against a grant of intervenor costs, the applicant must overcome a presumption that the final claim for costs will be denied. If the Commission has declined to make a preliminary determination on the discretionary factors listed in Minn. Rules, Part 7831.0500, subp. 2, no presumption is established regarding those factors.

B. Minn. Rules Part 7831.0600. Claim for Compensation

An intervenor filing a claim for compensation award must do so within 90 days after the time for reconsideration has elapsed or the date the Commission issued its Order after reconsideration. The claim must contain an adoption or amendment of the original petition elements, a detailed description of intervenor services and costs, and a description of how the intervenor's contribution to the proceeding may have materially assisted the Commission.

C. Minn. Rules, Part 7831.0800 Award for Compensation

In order to be granted a compensation award, an intervenor must have materially assisted the Commission in its deliberations, and must have insufficient financial resources, but for the award, to afford all or part of its intervenor costs. The rule provides a list of factors, no one of which is to be dispositive, for the Commission's determination of material assistance. The section also provides a list of factors related to financial need.

II. Position of the Parties

A. Mr. Shark's Rate Case Participation and Financial Resources

Mr. Shark argued that he materially assisted the Commission by presenting legal authority and ratepayer advocacy on pivotal issues such as:

- whether the rate case filing and beginning of interim rate collection was premature because it was in violation of the terms of the parties' stipulation and agreement which was adopted by the Commission in its merger order; and
- whether the collection of income tax in rates, but not paid to taxing authorities results in Xcel receiving and ratepayers paying more than is required to ensure just and reasonable rates.

Mr. Shark argued that he assisted the Commission in deliberating and resolving the aforementioned issues through the submission of documents, briefs, arguments and comments.

Mr. Shark submitted an itemized list of expenses, totaling \$30,821.04.² Mr. Shark subsequently indicated that he had incurred additional expenses totaling \$12,719. Mr. Shark requested that his claim be approved for payment up to the current statutory maximum amount of \$20,000.

Mr. Shark reiterated that his income does not exceed his necessary health, housing and living expenses; and that his net worth is currently insufficient to cover the costs of intervention.

B. Xcel

Xcel argued that, while the Commission has not specifically addressed the requirements for showing need by an individual seeking intervenor compensation pursuant to Minn. Rules, Part 7831.0800, Mr. Shark did not present an adequate demonstration of financial need to support his claim.

Xcel urged the Commission to apply the provisions of Minn. Rules, Part 7831.0700 and obtain from Mr. Shark, subject to protection from public disclosure, more detailed factual information relating to Mr. Shark's financial conditions and further justification for compensation.

III. Commission Action

The Commission finds that Mr. Shark has satisfied the standards for an award of compensation under Minn. Rules, Part 7831.0800.

² The amount included approximately 190 hours in attorney fees, postage, copies, mileage and other expenses.

Mr. Shark intervened in the Xcel rate case proceeding following the Commission's decision in Docket No. E, G-002/C-03-1871,³ in which the Commission recognized that the choice of tax methodology utilized by a regulated utility would be better addressed in a rate case proceeding. Thereafter, Mr. Shark intervened in this proceeding, presenting legal and financial analysis in support of ratepayers, that a change in tax methodology was needed.

Mr. Shark, along with the Residential and Small Business Utilities Division of the Office of the Attorney General (RUD-OAG), argued that Xcel should not be permitted to recover its tax expense in rates because Xcel's tax liability was ultimately offset by tax deductions for an approximately \$3 billion loss sustained by an unregulated affiliate.

Mr. Shark also filed extensive comments regarding the appropriateness of the timing of Xcel's rate case filing under the terms and conditions of Xcel's merger stipulation. Mr. Shark's participation helped to clarify complicated issues.

The unique facts of this case demonstrate that Mr. Shark is entitled to an award of intervenor compensation. His participation was clearly influenced by and in an attempt to promote a public purpose or policy. Mr. Shark provided a different perspective and analysis to a novel and complex issue. He provided materially useful information not of common knowledge, and raised issues relevant to resolution of the tax issues. If Mr. Shark had not intervened in this case, these interests would likely not have been as vigorously represented in the rate case.

Minn. Rules 7831.0300, subp. 3, requires an applicant for intervenor compensation to make a showing of insufficient financial resources. The Commission requested that Mr. Shark provide financial information in support of his claim pursuant to Minn. Rules 7831.0700 and 7831.0800. As noted in its order Granting Variance and Making a Preliminary Determination of Eligibility, the Commission is aware that Mr. Shark was hospitalized several times during the course of these proceedings. Mr. Shark stated that his necessary health, housing and food costs have escalated to the point where they exceed his total income from all sources. Mr. Shark further stated that the award is sought to protect what funds he does have to pay living expenses.

Mr. Shark has submitted that he would be unable to pay for services and costs associated with intervention, but for a compensation award. Based on the record as a whole, the Commission is satisfied that he has insufficient financial resources to afford the costs of intervention herein. The Commission finds that Mr. Shark has satisfied the standards under Minn. Rules, Part 7831.0800 for an award of intervenor compensation under the unique factual scenario presented herein. The Commission will grant the intervenor his request of compensation in the amount of \$20,000 in the Xcel electric rate case.

³ Mr. Shark filed a complaint in that proceeding, subsequently dismissed by the Commission, seeking potential refund of income taxes collected by Xcel from ratepayers, arguing that the amount collected for taxes likely would not be paid to taxing authorities.

ORDER

1. The Commission grants Myer Shark's claim for intervenor compensation as presented.
2. Xcel shall pay Mr. Shark his compensation claim within 30 days of the date of this Order. Within ten days of the payment of the compensation claim to Mr. Shark, Xcel shall file a statement of compliance with the Commission.
3. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar
Executive Secretary

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